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Supreme Court, U.S.
FILED
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No. 99-34

In the Supreme Court of the United States

YANKTON SIOUX TRIBE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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9 pp

QUESTION PRESENTED

Whether under the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. 3001 *et seq.*, the United States may obtain and enforce an order of garnishment directed to an Indian Tribe as garnishee.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 5-6) is unpublished. The opinion of the district court (Pet. App. 1-4) is reported at 12 F. Supp. 2d 999.

JURISDICTION

The judgment of the court of appeals was entered on May 20, 1999. The petition for a writ of certiorari was filed on June 30, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In August 1997, the United States sued William Weddell to collect on a delinquent student loan. Gov't C.A. Br. i. The district court entered a default judg-

ment in favor of the government. The United States sought to enforce the judgment by garnishing Weddell's wages, as authorized by the Federal Debt Collection Procedures Act of 1990 (FDCPA), 28 U.S.C. 3205. Weddell was employed by petitioner, the Yankton Sioux Tribe of South Dakota. In May 1998, the district court issued a continuing writ of garnishment, which was served on petitioner as garnishee. Gov't C.A. Br. i.

Petitioner moved to dismiss the garnishment proceeding, asserting tribal sovereign immunity from judicial process. Pet. App. 1. The district court denied the motion. *Id.* at 1-4. The court explained (*id.* at 2-3) that the FDCPA defines a "garnishee" as "a person (other than the debtor) who has * * * possession, custody, or control of any property in which the debtor has a substantial nonexempt interest * * * and against whom a garnishment * * * is issued by a court," 28 U.S.C. 3002(7), and defines the term "person" to include "a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government *or an Indian tribe*," 28 U.S.C. 3002(10) (emphasis added). Reading those definitions together with 28 U.S.C. 3002(12), which excludes from the Act's definition of "property" any land held by the government in trust for Tribes or Indians, and any Indian land subject to federal restraints on alienation, the court concluded that "Congress unequivocally expressed a waiver of the Indian tribes' sovereign immunity in the clear and unambiguous language of the * * * Act." Pet. App. 2.

The court of appeals affirmed. Pet. App. 5-6. In a brief per curiam order, the court noted that it had "reviewed the record and the parties' briefs" and that it

was "satisfied the district court's ruling that the Act waives the Tribe's sovereign immunity was correct." *Id.* at 5. Concluding that "an extended discussion [was] not warranted," the court "affirm[ed] for the reasons stated by the district court." *Id.* at 5-6.

ARGUMENT

1. On July 2, 1999, the district court terminated the garnishment order at issue in this case, on the ground that the underlying debt to the United States has been satisfied. See App., *infra*, 1a. There is accordingly no present case or controversy between the parties.[1]

2. Indian Tribes, like the States (and the United States), are generally immune from being sued without their own consent. *Kiowa Tribe* v. *Manufacturing Techs., Inc.*, 523 U.S. 751 (1998).[2] Even a State's immunity from suit in federal court does not extend, however, to suits brought by the United States. See, *e.g.*, *Alden* v. *Maine*, 119 S. Ct. 2240, 2267 (1999);

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[1] As we explain below, denial of certiorari would be appropriate even if the case were not moot. There is accordingly no reason for this Court to grant the petition and vacate the judgment below. Compare, *e.g.*, *Velsicol Chem. Corp.* v. *United States*, 435 U.S. 942 (1978) (denying certiorari) with, *e.g.*, *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-41 (1950) (discussing vacatur on grounds of mootness); see U.S. Br. in Opp. at 4-11, *Velsicol*, *supra* (No. 77-900); R. Stern et al., *Supreme Court Practice* 257-258, 724 & n.29 (7th ed. 1993).

[2] Tribal immunity from suit "is not coextensive with that of the States." *Kiowa*, 523 U.S. at 756. In the absence of contrary congressional action, for example, federal law protects Tribes, unlike States, from suit either in federal court or in the courts of any State. See *id.* at 755-756 (distinguishing *Nevada* v. *Hall*, 440 U.S. 410 (1979)). On the other hand, as petitioner recognizes (Pet. 6), the immunity of Tribes, unlike that of the States, "is subject to the superior and plenary control of Congress." Compare, *e.g.*, *Alden* v. *Maine*, 119 S. Ct. 2240 (1999).

United States v. *Mississippi*, 380 U.S. 128, 140-141 (1965); *Principality of Monaco* v. *Mississippi*, 292 U.S. 313, 328-329 (1934). *A fortiori*, a Tribe's residual sovereignty cannot shield it from suit by the United States. See *United States* v. *Red Lake Band of Chippewa Indians*, 827 F.2d 380, 383 (8th Cir. 1987) ("[J]ust as a state may not assert sovereign immunity as against the federal government, neither may an Indian tribe, as a dependent nation, do so.") (citation omitted), cert. denied, 485 U.S. 935 (1988); *Florida Paraplegic Ass'n* v. *Miccosukee Tribe of Indians*, 166 F.3d 1126, 1134-1135 (11th Cir. 1999); *Reich* v. *Mashantucket Sand & Gravel*, 95 F.3d 174, 182 (2d Cir. 1996). Petitioner's arguments to the contrary (Pet. 6-9) notwithstanding, nothing in this Court's cases has ever called that proposition into question. See *Alden*, 119 S. Ct. at 2267.

3. Petitioner concedes, in any event, that Congress may authorize suits against a Tribe, so long as it does so "unequivocally." See Pet. 5-6; see also *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 58-59 (1978) (discussing immunity from suits brought by private parties). Both courts below applied that standard, and held that Congress unequivocally authorized judicial action against Tribes under the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. 3001 *et seq.* See Pet. App. 2-3, 5-6. Under the plain language of the Act—which authorizes garnishment of property held by "garnishees," 28 U.S.C. 3205, defines a "garnishee" as a "person," 28 U.S.C. 3002(7), and defines "person" to include "an Indian tribe," 28 U.S.C. 3002(10)—that conclusion is inescapably correct. See also *Blue Legs* v. *United States Bureau of Indian Affairs*, 867 F.2d 1094, 1096-1097 (8th Cir. 1989) (applying similar analysis to hold that Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, authorizes suits against

Tribes by private parties); *Northern States Power Co.* v. *Prairie Island Mdewakanton Sioux Indian Community*, 991 F.2d 458, 462-463 (8th Cir. 1993) (Hazardous Materials Transportation Act, 49 U.S.C. 5101 *et seq.*). The decision below does not conflict with any decision of this Court or of any other court of appeals, and there is no reason for further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

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Attorneys

AUGUST 1999

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

Civil Action No. 97-4132

UNITED STATES OF AMERICA, PLAINTIFF

v.

WILLIAM H. WEDDELL, DEFENDANT

AND

YANKTON SIOUX TRIBE,
MARTY, SOUTH DAKOTA, GARNISHEE

[Filed July 02, 1999]

ORDER TERMINATING CONTINUING GARNISHMENT

Based upon the Motion on file herein, and pursuant to 28 U.S.C. § 3205(c)(10)(C),

IT IS ORDERED that the Garnishment herein is hereby terminated by order of this Court.

Dated this 2nd day of July, 1999.

BY THE COURT;

/s/ LAWRENCE L. PIERSOL
LAWRENCE L. PIERSOL
CHIEF JUDGE

ATTEST:

JOSEPH HAAS, CLERK

BY: SHELLY MARGULIES
DEPUTY CLERK

(SEAL OF THE COURT)